STATE OF MICHIGAN

COURT OF APPEALS

ALVIN J. WOOLSEY,

Plaintiff-Appellee,

v

TOWNSHIP OF CASCO,

Defendant-Appellant,

and

FRED C. KICK and TAMARA A. KICK,

Defendants.

UNPUBLISHED
January 4, 2005

No. 250498
Allegan Circuit Court
LC No. 00-026862-PZ

ALVIN J. WOOLSEY,

Plaintiff-Appellee,

v

TOWNSHIP OF CASCO,

Defendant-Appellee,

and

FRED C. KICK and TAMARA A. KICK,

Defendants-Appellants.

No. 250527
Allegan Circuit Court
LC No. 00-026862-PZ

Before: Hoekstra, P.J., and Griffin and Borrello, JJ.

PER CURIAM.

In these consolidated cases, defendants – Township of Casco (the Township), Fred C. Kick and Tamara A. Kick (the Kicks) – appeal by right an order of the circuit court granting

plaintiff Alvin J. Woolsey's motion for summary disposition and vacating certain property located in Casco Township, Allegan County. This case arose out of plaintiff's suit, filed in May 2000, to vacate the remainder of Variety Park Plat (the Plat), including the park, alley, and streets within the Plat originally dedicated to public use. We affirm.

I

In 1911, George and Emma Griffin platted land along Lake Michigan in Casco Township to be known as Variety Park. The original plat contemplated the development of a park and forty-one lots along five streets and an alley. The park in the Plat is located along the shore of Lake Michigan; access to the park is by way of the dedicated streets and alley located within the Variety Park Plat. The Griffins signed the Plat on September 13, 1911, stating that "the streets, park and alleys as shown on said plat are hereby dedicated to the use of the public." On September 21, 1911, at a regularly scheduled meeting, the township board of Casco Township approved the plat, and it was thereafter recorded with the register of deeds office. The Griffins never developed Variety Park, and, when George Griffin passed away in 1921, the probate court ordered that the Plat be divided into two parcels for the purpose of sale. Neither the court order nor the legal descriptions set forth therein referenced lots or the publicly dedicated areas of the Plat. The probate court's order authorized the estate administrator to sell the real estate using metes and bounds legal descriptions that fully incorporated the previously dedicated areas into the parcels intended for private sale. In fact, upon the sale of these two parcels, the beach or "park" along the shore of Lake Michigan was divided into two sections, one section lying north of a well-defined ravine and one section lying south of the ravine.

By 1945, the entire southern half of the Plat had been deeded to Joseph Geary, and Alvin R. and Marie Woolsey (Joseph Geary was Marie Woolsey's brother and had an interest in the southern half of Variety Park dating from the 1930's). The lots were conveyed by warranty deed, and the streets and parks were conveyed by quit claim deed. The Woolsey property incorporates all of lots 14-41 of Variety Park. In 1973, plaintiff Woolsey, as heir of Marie Woolsey, was assigned title to the southern half of the Plat.

The Plachta family has owned the northern half of the Plat since the 1950's. In 1966, the Plachtas filed a successful action in Allegan circuit court to vacate lots 1-13 and the streets in the northern half of the Plat, such that only the southern half remains. The 1966 judgment vested title to those areas in the northern half of the Plat to the owners, free and clear of all claims of the public or other parties. Neither plaintiff Woolsey nor his predecessors in title joined with the Plachtas in seeking vacation of streets, alley, or the park in 1966. The Plachtas did not request that the park in the Plat be vacated, and, thus, no dedicated park land was vacated as a result of the 1966 suit, even though the Plachtas' lots abutted the park.

The Woolsey property has never been developed as lots, and the streets and alley have never been cleared for public access; except for the Woolsey home, constructed sometime in the 1930's, and a driveway, the land remains a heavily forested area. The Woolseys placed two sheds and a car shelter on the property. Although the dwelling and outbuildings owned by plaintiff are located on the platted lots within Variety Park, portions of the Woolsey yard apparently extend over the platted streets, and the private drive, which was topped with gravel in 1985, traverses a section of the area platted for Cherry Street. Moreover, in 1982, in the areas platted as "Lake Avenue" and "park," plaintiff Woolsey expended over $40,000 and undertook

extensive erosion control measures to halt the erosion of the bluff, which has now eroded past the street designated as Lake Avenue.

There is no access across the Woolsey property except for the private driveway, the entrance to which lies entirely outside the bounds of the platted streets. A stairway down the bluff to the beach was erected in the 1940's, but fell into disrepair and was replaced by a path through the woods along the ravine in 1967, for the purpose of accessing the beach from the house. In his affidavit filed in conjunction with the present suit, plaintiff Woolsey stated that he and his family have always treated the entire southern half of Variety Park as private property and have not permitted trespassers to use the land. Plaintiff affied that neither the stairs nor the path has ever been used by members of the public. The only stairway currently in existence is located on property to the north of the Woolsey property and is a private stairway owned and constructed by the Plachtas for their own use. The "alley" running along the southern half of the Woolsey property has likewise never served as a public thoroughfare and remains unimproved. Plaintiff recalled several instances in the 1940's when his uncle, Joseph Geary, called the police to oust trespassers from the property. Plaintiff stated in his affidavit that for many years, he has placed a chain across his private driveway in the off-season to block public access to his property and has never been contacted by the Township to remove the chain barricade.

It is undisputed that the Allegan County Road Commission has never accepted the dedicated streets of the Plat as public right-of-ways, with the exception of what is now known as 74th Street, which is, and for many years has been, part of the county road system by use and by improvement. Consequently, in conjunction with the present action, the road commission has acknowledged that it does not maintain or exercise control over the platted streets in any manner; in fact, it has consented to the vacation. It is further undisputed that defendant Township has never acted to improve or clear any of the dedicated property that is the subject of this action. Moreover, defendant Township has never passed a resolution accepting the dedication. However, the Township has treated the dedicated lands as public property for tax purposes; according to the affidavit of the tax assessor, plaintiff never has been assessed taxes on the platted streets or park.[1]

In objecting to the vacation action, defendants Township and Kick have made allegations, through affidavits and answers to interrogatories, of sporadic personal use of the dedicated areas. Specifically, defendants Kick and another neighbor claim to have occasionally used all of the streets and alley sometime in the 1970's and 1990's. The township zoning administrator likewise affied that he has occasionally used the publicly dedicated areas since the 1960's for recreational purposes.

Plaintiff brought suit to vacate the Plat in May of 2000 and subsequently moved for summary disposition pursuant to MCR 2.116(C)(10). In an order dated August 21, 2001, the

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[1] The public streets vacated in the 1966 decision in favor of the Plachtas were added to the Plachtas' tax assessment after that judgment. Likewise, from 1983 to 1999, the Plachtas challenged (with eventual success) the taxation of their property as lakefront property on the ground that the park was situated between their property and Lake Michigan.

trial court vacated the Plat as to lots 14-41, but denied summary disposition as to the streets, alley, and park pending further discovery. In March 2002, plaintiff renewed his motion for summary disposition, arguing that mere acceptance and certification of the Plat did not qualify as acceptance of the dedication. Plaintiff further argued that tax exemption of the dedicated areas likewise did not constitute acceptance of the dedication, and that evidence, if any, of public use occurred too late after the dedication to constitute acceptance by user. Finally, plaintiff contended that the offer to dedicate the streets, alley, and park was withdrawn or lapsed before it was accepted by the Township. Defendants responded by arguing that, pursuant to the land division act (previously known as the subdivision control act), MCL 560.101 *et seq*., the Township had accepted the Plat by approval or through public use long before the offer was withdrawn, if it ever was, and before any lapse.

The trial court granted plaintiff's renewed motion for summary disposition, holding that plaintiff was entitled to the vacation of the remainder of the Plat as a matter of law. The court first noted that defendant Township admitted there had been no expenditure of public funds in any area of the Plat, no resolution accepting the publicly dedicated areas, and neither the roads nor the beach had been used or worked on by public authorities. Thus, the court concluded that defendant Township had failed to show either formal acceptance of the dedication or informal acceptance by user and, in fact, had undertaken no legally cognizable act of acceptance since the filing of the Plat in 1911. In short, the circuit court concluded that "Casco Township did nothing that could constitute an acceptance of the dedication prior to the 1978 amendment of MCL 560.255b [the land division act] which creates a presumption of acceptance." The circuit court further concluded that plaintiff's use of the dedicated property in a manner inconsistent with public ownership, in combination with the absence of any action by the Township, were sufficient to constitute withdrawal and lapse of the offer of dedication before acceptance by the Township. Finally, in granting the vacation of the dedicated property, the trial court rejected the Township's argument that plaintiff should be required to create and file a new plat in place of the one being vacated. The court entered a revised final judgment on August 1, 2003, vacating the remainder of the Plat in favor of plaintiff. Defendants now appeal.

II

This Court reviews de novo interpretations of the land division act, MCL 560.101 *et seq*. *Martin v Beldean*, 469 Mich 541, 546; 677 NW2d 312 (2004). This Court also reviews de novo the grant or denial of a motion for summary disposition. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of a claim. *Id.* at 561; *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999). Summary disposition is appropriate under MCR 2.116(C)(10) if "there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." When determining whether there is a genuine issue as to any material fact, the trial court must consider the affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. *Maiden, supra* at 120. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.*; MCR 2.116(C)(10), (G)(4).

In presenting a (C)(10) motion, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. *Quinto v Cross*

& Peters Co, 451 Mich 358, 362-363; 547 NW2d 314 (1996). The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. *Id.* The nonmoving party may not rely on mere allegations or denials in pleadings, but must set forth specific facts showing that a genuine issue of material fact exists. *Id*. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *Id*. at 363; *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999).

III

Defendant Township first contends on appeal that the trial court erred in concluding that the Township's approval of the Plat in 1911 did not constitute a formal acceptance of the dedication or, at least, evidence of informal approval. We disagree.

This case involves an offer to dedicate land to the public through a recorded plat. It is not disputed that the park, streets, and alley were dedicated to the public. Before the enactment of a statutory scheme governing the creation and acceptance of plats, Michigan courts treated offers to dedicate land by plat like any other common law dedication of land for public use. According to Michigan common law, an offer to dedicate lands for public use can be made through a plat, but "some action by competent public authority is essential before it can have the intended effect." *County of Wayne v Miller*, 31 Mich 447, 448; 1875 WL 6397 (1875). See also *Beulah Hoagland Appleton Qualified Personal Residence Trust v Emmet County Rd Comm*, 236 Mich App 546, 554; 600 NW2d 698 (1999).

In 1978, the Legislature amended the land division act to provide, in pertinent part, for a statutory presumption regarding the acceptance of plats dedicated to public use:

> (1) Ten years after the date the plat is first recorded, land dedicated to the use of the public in or upon the plat shall be presumed to have been accepted on behalf of the public by the municipality within whose boundaries the land lies.
>
> (2) Presumption conclusive unless rebutted. The presumption prescribed in subsection (1) shall be conclusive of an acceptance of dedication unless rebutted by competent evidence before the circuit court in which the land is located, establishing either of the following:
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> (a) That the dedication, before the effective date of this act and before acceptance, was withdrawn by the plat proprietor.
>
> (b) That notice of the withdrawal of the dedication is recorded by the plat proprietor with the office of the register of deeds for the county in which the land is located and a copy of the notice was forwarded to the state treasurer, within 10 years after the date the plat of the land was first recorded and before acceptance of the dedicated lands. [MCL 560.255b.]

In *Vivian v Roscommon Co Bd of Rd Comm'rs*, 433 Mich 511, 523; 446 NW2d 161 (1989), our Supreme Court held that this 1978 amendment to the land division act operates retroactively. See also *Higgins Lake Property Owners Ass'n v Gerrish Twp*, 255 Mich App 83,

115-116; 662 NW2d 387 (2003). Here, plaintiff has not formally withdrawn the offer in the manner described in subsection (2)(b) of MCL 560.255b, and, therefore, this subsection does not apply. Therefore, plaintiff must rebut the presumption pursuant to subsection (2)(a). The *Vivian* Court has interpreted subsection (2)(a) to mean "that a withdrawal before acceptance prior to December 22, 1978, rebuts the presumption of acceptance set forth in § 255b(1)." *Vivian, supra* at 523. The Court clarified that withdrawal means "withdrawal in the manner provided by the common law, including use by an adjoining property owner inconsistent with continuation of the offer, recording notice of withdrawal, or commencement of an action against the governing body to vacate the offer of dedication." *Id.* at 523 n 31.

Under the common law, an offer to dedicate land for public use remains open "[a]s long as the plat proprietor or his successor took no steps to withdraw the offer to dedicate . . . ." *Kraus v Dep't of Commerce*, 451 Mich 420, 427; 547 NW2d 870 (1996), citing *Vivian, supra* at 519-520. However, this continuing offer to dedicate may be withdrawn after a reasonable time or may lapse with the passage of an inordinate amount of time. *Id.* Whether an offer has lapsed or continues depends upon the facts of each case. *Id*. "The burden of proving acceptance of the offer is on the public authority; the burden of proving withdrawal of the offer is on the property owner." *Id*. at 425.

Thus, section 255(b) of the land division act applies to dedications before 1978, but an owner can rebut the presumption of acceptance by showing that the offer was withdrawn according to the applicable common law prior to any acceptance by the public and prior to December 22, 1978, or that, under the common law doctrine of lapse, the offer is no longer valid. *Id.* at 425; *Vivian, supra* at 523.

The *Kraus* Court explained that acceptance of an offer to dedicate must be disclosed by a "manifest act" by the public authority:

> [T]he well-established rule is that a valid dedication of land for a public purpose requires two elements: a recorded plat designating the areas for public use, evidencing a clear intent by the plat proprietor to dedicate those areas to public use, and acceptance by the proper public authority. *Lee v Lake*, 14 Mich 11, 18 (1865). Public acceptance must be timely, *Wayne Co v Miller*, 31 Mich 447, 448-449 (1875), and must be disclosed through a manifest act by the public authority "either formally confirming or accepting the dedication, and ordering the opening of such street, or by exercising authority over it, in some of the ordinary ways of improvement or regulation." *Tillman v People*, 12 Mich 401, 405 (1864). In *Miller*, this Court explained that the requirement of public acceptance by a manifest act, whether formally or informally, was necessary to prevent the public from becoming responsible for land that it did not want or need, and to prevent land from becoming waste property, owned or developed by no one. *Id*. at 448. [*Kraus, supra* at 424.]

See also *Higgins Lake Property Owners Ass'n, supra* at 113; *Christiansen v Gerrish Twp*, 239 Mich App 380, 383-384; 608 NW2d 83 (2000).

Offers of dedication of property to the public may be accepted by a governmental authority: (1) formally by resolution;[2] (2) informally through the expenditure of public money for repair, improvement, and control of the property; or (3) informally through public use. *Eyde Bros Development Co v Roscommon Co Bd of Rd Comm'rs*, 161 Mich App 654, 664; 411 NW2d 814 (1987). Once a dedication is properly accepted, the "land intended for the streets, alleys, commons, parks or other public uses as designated on the plat shall be held by the municipality in which the plat is situated in trust to and for such uses and purposes." MCL 560.253(2). Likewise, once land has been properly dedicated to a municipality, it cannot be vacated, except with the permission of the municipality's governing body. MCL 560.226(1)(c). Therefore, if a dedication of platted property was timely and effectively accepted by the pertinent public authority, a circuit court has no authority to vacate the property, absent the consent of that public authority. *Kraus, supra* at 424.

In the instant case, defendant Township argues that the trial court erred in finding that the Township's approval of the Plat in 1911 did not constitute formal acceptance of the dedication to the public of the streets, alley, and park in the Plat. The Township admits that it has never passed a formal resolution, other than the original plat approval, or recorded any notice reserving the public's rights. Defendant nonetheless argues that approval of the Plat before its recordation constituted formal approval of the dedication within the meaning of *Kraus, supra*. We disagree.

In *Marx v Dep't of Commerce*, 220 Mich App 66, 77; 558 NW2d 460 (1996), this Court directly addressed – and refuted – the very argument advanced by defendant in the case at hand. The *Marx* Court considered the issue whether the defendant township's approval of a plat constituted acceptance of the plat's dedication to the public. Acknowledging that "[t]he panels of this Court are divided with regard to this issue," *id*. at 76, the *Marx* Court first cited *Bangle v State Treasurer*, 34 Mich App 287; 191 NW2d 160 (1971), for the proposition that a township's mere approval of a plat may constitute adequate acceptance of a plat's dedication to the public. *Id*. The *Marx* Court noted, however, that in *Salzer v State Treasurer*, 48 Mich App 34; 209 NW2d 849 (1973), a different panel of this Court declined to follow *Bangle*, *supra*, after determining that the *Bangle* Court "'erroneously equated township approval of a plat with formal acceptance.'" *Id.* at 76-77, quoting *Salzer, supra* at 37. Citing the well-established principles set forth in *Kraus, supra*, the *Marx* Court resolved the conflict by adopting the law of *Salzer*:

> Our Supreme Court recently held that the purpose of the requirement of public acceptance by a manifest act is necessary to prevent the public from

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[2] A formal acceptance may be by formal resolution identifying the property accepted, such as through a resolution under the McNitt Act or by any other resolution identifying the affected land. *Kraus, supra* at 430, 433-435, 441-442. It may also be accomplished by recordation of an affidavit reserving the public's rights in the dedicated property. *Id.* at 441.

> becoming responsible for land that it neither wants nor needs and to prevent the land from becoming waste property. *Kraus, supra* at 424-425. We believe that the Court's ruling in *Salzer, supra*, is consistent with this principle. Furthermore, the language found in judicial decisions concerning this issue suggests that a more specific act than approval of a plat is required. In *Kraus, supra*, the Supreme Court stated that acceptance "must be disclosed through a *manifest* act by the public authority 'either formally *confirming or accepting* the dedication, and ordering the opening of such street, or by exercising authority over it, in some of the ordinary ways of improvement or regulation.'" *Id*. at 424, quoting *Tillman v People*, 12 Mich 401, 405 (1864) (emphasis supplied). The *Eyde* Court held that acceptance of dedicated parcels may be "(1) formal by *resolution*; (2) informal through the expenditure of public money for repair, improvement and control of the roadway; or (3) informal through public use." *Id*. at 664 (emphasis supplied). *Mere approval of a plat, without reference to acceptance of property dedicated by the plat, is insufficient under these standards to constitute acceptance.* [*Id.* at 77; emphasis added.]

Marx is directly on point and leads us to conclude that the circuit court did not clearly err in finding that defendant Township never formally accepted the dedication through its act of simply approving the Plat in 1911.

The Township also argues that the fact that the dedicated property was removed from the tax rolls constitutes, alone or in combination with other evidence, some form of acceptance. However, such action cannot constitute formal acceptance. See *Kraus, supra* at 436 n 10, quoting *Murphey v Lee Twp*, 239 Mich 551, 562; 214 NW 957 (1927) ("Moreover, the mere removal of dedicated property from the tax roll does not amount to a formal acceptance because '[t]he tax assessor ha[s] no authority to accept dedication for the public.'").

Consequently, as the circuit court recognized, the sole remaining avenues by which defendant Township might show viable acceptance would be informally through the expenditure of public money for repair, improvement, and control of the property, or through public use. *Eyde, supra* at 664.

A municipality can informally accept a dedication "by exercising authority over it, in some of the ordinary ways of improvement or regulation." *Kraus, supra* at 424. See also *Hooker v City of Grosse Pointe*, 328 Mich 621, 630; 44 NW2d 134 (1950); *Eyde, supra* at 666-668; *Neal v Gilmore*, 141 Mich 519, 523; 104 NW 609 (1905); *Elias Bros, Inc v City of Hazel Park*, 1 Mich App 30, 34-35; 133 NW2d 206 (1965). However, in the instant case, it is undisputed that defendant Township never expended public money on either the roads or the park, and never attempted to clear or improve the property in any way. As the trial court accurately noted:

> Although defendant Casco Township points out the fact that plaintiff has not been assessed taxes for the streets or the park property as proof of the township's acceptance, this fact is given little weight. Defendant township was aware that the park was dedicated to the public due to the 1983-1999 tax assessment dispute with Mr. Plachta, plaintiff's neighbor who sought a reduction in taxes due to the park being between his property and the lakeshore. During this time, Casco Township never expended funds to clean or maintain the beach park,

> never posted signs indicating the hours of use or indicating that it was a public beach. And never made any improvements to provide better access to the beach.

Moreover, as previously noted, the county road commission has acknowledged, for purposes of this action, that it has consented to the vacation of the dedicated streets and alley and has not made any attempt to improve the dedicated streets with the exception of Lake Shore Drive. Under these circumstances, we find no clear error in the trial court's conclusion that defendant Township never informally accepted the dedication by exercising authority over it by means of improvement or regulation.

Likewise, contrary to the arguments of defendant Township and defendants Kick, the record does not support a finding of informal acceptance by public use. *Eyde, supra*. In *Village of Lakewood Club v Rozek*, 51 Mich App 602, 603-604; 215 NW2d 780 (1974), this Court, when presented with the issue of acceptance by public use of dedicated park land, noted:

> The type of land dedicated dictates different standards for acceptance of the land. Streets and highways require maintenance by public authorities. Therefore, if there is to be an acceptance of a public way it must be by continued use by the public, and such exercise of control over it by authorities from which an acceptance could be reasonably inferred.
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> * * *
>
> "Park land" is different than highway. Many times, parks are left in their natural state for people to enjoy. Once dedicated, "park land" may be accepted by continued public use. [Citations omitted.]

With regard to roadways, our Supreme Court in *Smith v Auditor General*, 380 Mich 94, 99; 155 NW2d 822 (1968), concluded that there was no informal acceptance by public user, where:

> There was evidence that owners of lots in the plat, their guests, and cottage renters regularly used the road, but that the general public did not. There was also evidence that for a short period during summer months a mailman used it to deliver mail to occupants of the plat. The circuit judge concluded, and we agree, that the evidence did not establish such public use of the road as to constitute acceptance by user of its dedication as a public road.

In the instant case, the facts of record indicate that a few persons, including defendants Kick, may have used the platted streets and the park. However, as in *Smith, supra*, such use was, at most, sporadic and inconsistent. As the trial court noted,

> It is not rational to believe that plaintiff's neighbors who wander over unmarked property lines or a teenager riding a motorcycle across plaintiff's property or teenagers drinking in the woods could accept property on behalf of the township and bind the township with the legal liabilities incidental to such ownership. At best such uses were casual, intermittent and undefined. See *Binkley v Asire*, 335 Mich 89, 95; 55 NW2d [742] (1952) (finding that use for recreational purposes by certain members of the public of a park where the limits

> of the park were not marked in anyway [sic] and where the adjacent property was also used did not amount to an acceptance of the offer of dedication).

We agree with the trial court that informal acceptance by user is simply not supported by the facts of record. In fact, since 1911, defendant Township has done nothing that could constitute a legally cognizable act of formal or informal acceptance. Indeed, the record indicates that defendant Township did not express any interest in the dedicated areas until the initiation of this vacation action in May 2000. Consequently, defendants have failed to carry their burden of proving formal or informal acceptance of the dedication of the Plat. *Kraus, supra* at 425.

Moreover, the undisputed facts not only establish that the offer to dedicate the streets, alley, and park was never accepted by the Township or county, but also that the offer to dedicate was effectively withdrawn prior to the 1978 amendment to MCL 560.255b by the Woolsey family's use of the dedicated areas in a manner inconsistent with the offer of dedication, thereby rebutting the statutory presumption of acceptance. As previously noted, as long as the plat proprietor or his successors take no steps to withdraw an offer to dedicate land for public use, the offer is treated as continuing. *Kraus, supra* at 427. The *Kraus* Court noted that uses which have been considered inconsistent by our Michigan courts have included erected buildings, planted trees, fenced-in enclosures, or simply the allowance of overgrowth in the area offered for dedication. *Id*. at 431, 438. See also *Vivian, supra* at 520-521; *Eyde, supra* at 666.

Here, the trial court held that plaintiff and his predecessors "took actions that were not consistent with public ownership by constructing the driveway, stairs, and the path through the ravine, all of which encroached on areas dedicated to the public," and "[l]ikewise, plaintiff's uncle's action in calling the police to oust teenagers drinking in the ravine woods is indicia of an action inconsistent with public ownership." We agree with the trial court that these actions on the part of plaintiff, when considered in conjunction with the complete absence of any legally cognizable act of acceptance by the Township since the original dedication in 1911, constitute an effective withdrawal and lapse of the offer to dedicate the Plat to the public. See *Kraus, supra* at 435 (eighty-six-year span before acceptance held to be an unreasonable lapse); *Marx, supra* at 78-79 (sixty-eight-year span before acceptance held to be untimely delay). Accordingly, the trial court did not clearly err in determining that plaintiff proved that the offer to dedicate had been withdrawn pursuant to MCL 560.255b(2)(a), before the 1978 amendment to the land division act and before acceptance. The trial court therefore did not err in granting plaintiff's renewed motion for summary disposition and in holding that plaintiff was entitled to have the remainder of Variety Park Plat vacated as a matter of law.

IV

Lastly, defendant Township argues that the trial court failed to comply with MCL 560.229(1) when it did not require plaintiff to prepare and file a re-plat to replace the plat that was vacated. The statute in question reads, in pertinent part:

> (1) If the court orders a plat to be vacated, corrected, or revised in whole or in part, the court shall also direct plaintiff to prepare, in the form required by this act for a final plat, either a new plat of the part of the subdivision affected by the judgment or a new plat of the entire subdivision if the court's judgment affects a major part of the subdivision. [MCL 560.229.]

After the trial court rendered its decision granting summary disposition to plaintiff, the court heard arguments concerning which of two forms (Form A or Form B) should be filed as the court's final judgment. Form A vacated the plat in its entirety and did not require the filing of a new plat. Form B vacated the plat in its entirety and required the filing of a new plat. Defendant Township argued at the hearing that only Form B complied with MCL 560.229(1); in other words, the statute always requires the filing of a new plat, even after the vacation of the original plat in its entirety. Defendant maintained that its interpretation of the statute was consistent with the legislative intent to convert property from metes and bounds descriptions to lots. Plaintiff, on the other hand, argued that the statute should be read to apply only to partial vacations rather than complete vacations of platted property. The trial court, after noting that its decision resulted in the vacation of "all the lots, all the streets, public ways and park," concluded that it would be a "gesture in futility to require a re-plat or a revised plat of something that doesn't exist." The court, thus, utilized Form A as its final judgment.

Statutory construction is a question of law that this Court reviews de novo. *Wood v Auto-Owners Ins Co*, 469 Mich 401, 403; 668 NW2d 353 (2003). This Court begins the interpretation of a statute by examining the language of the statute itself. *Macomb Co Prosecutor v Murphy*, 464 Mich 149, 158; 627 NW2d 247 (2001). The statute should be read in context to determine if an ambiguity exists. *Id.* If the language is not ambiguous, the court shall not construe it, but rather will enforce it as written. *Id.* Where ambiguity exists, "this Court seeks to effectuate the Legislature's intent through a reasonable construction, considering the purpose of the statute and the object sought to be accomplished." *Id.* An act must be construed as a "whole to harmonize provisions and carry out the purpose of the Legislature." *Id.*

We agree with the parties that the language of MCL 560.229(1) is ambiguous and susceptible to multiple interpretations. The first part of subsection (1) clearly states that if a contingency is met, i.e., if the plat is "vacated . . . in whole or in part," then the court shall order the plaintiff to file a new plat for the "*part* of the subdivision affected by the judgment or a new plat of the entire subdivision if the court's judgment affects a major *part* of the subdivision" (emphasis added). Neither clause addresses the vacation of the *entire* subdivision. However, when viewed in context with other portions of the land division act, we agree with the trial court that subsection (1) does not require that plats vacated in their entirety be re-platted or replaced with meaningless "revised" plats. Section 103(3) of the land division act mandates that a survey and plat shall be made "when any *amendment, correction, alteration or revision*" of a recorded plat is ordered by the circuit court. MCL 560.103(3) (emphasis added). Notably, there is no mention of a need to file a new plat to replace a "vacated" plat. Moreover, the land division act clearly states that a circuit court shall have the power to vacate an entire plat, see MCL 560.221, and also makes provisions for the vesting of title to plats that are vacated. See MCL 560.227a. From these sections of the act, it appears that the Legislature intended that a circuit court would be able to vacate an entire plat and that a new plat need only be made when a plat is vacated in part. Therefore, the trial court did not err when it held that plaintiff need not file a new plat upon the entry of judgment in plaintiff's favor vacating the entire plat.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Richard Allen Griffin
/s/ Stephen L. Borrello